

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

IN RE UPSTREAM ADDICKS AND BARKER )	
(TEXAS) FLOOD-CONTROL RESERVOIRS )	Sub-Master Docket No. 17-cv-9001L
)	
)	Judge Charles F. Lettow
)	
THIS DOCUMENT RELATES TO: )	Electronically filed April 23, 2019
)	
)	
<u>ALL UPSTREAM CASES</u> )	

**STIPULATIONS OF FACT FOR TRIAL**

Pursuant to the Court's Amended Scheduling Order of February 13, 2019 (ECF No. 202), the parties hereby stipulate to the following facts for the trial of the thirteen claims in the Upstream Sub-Docket scheduled for May 6-17, 2019, in Houston, Texas. Each fact stipulation is numbered, and unnumbered headings are for organization and information purposes only. These fact stipulations are entered into for the purposes of the trial of the thirteen claims in the Upstream Sub-Docket only, and are not intended to be binding as to any other claim that falls within Master Docket No. 17-3000L, the Upstream Sub-Docket No. 17-9001L, or the Downstream Sub-Docket No. 17-9002L, or in any other action or proceeding. By agreeing to these stipulations of fact, the parties do not waive and reserve the right to challenge the relevance of the respective stipulations.

The parties have cited supporting Joint Exhibits for certain fact stipulations. The parties agree and stipulate to the authenticity and admissibility of each Joint Exhibit cited herein, and further agree and stipulate that these cited Joint Exhibits are admitted and can be used for any purpose consistent with this Court's evidentiary rules as if offered and admitted at trial.

**Stipulated Facts Concerning the Subject Properties**

1. The thirteen properties that are the subject of these Fact Stipulations are the properties identified and designated through the Test Property selection process required by the Court's Case Management Order, issued February 1, 2018 (ECF No. 37) (the "subject properties"). The subject properties are identified below by street address, legal description and the parcel number assigned to each property by the County in which the property is located.

2. The United States does not own a flowage easement on any of the subject properties.
3. The United States does not own a fee simple interest in any of the subject properties.

**Plaintiffs Todd and Christina Banker**

4. The property that is the subject of Plaintiffs Christina and Todd Banker's claim is a residential property located at 4614 Kelliwood Manor Lane, Katy, Texas (the "Banker property").
5. The Banker property is located in the Kelliwood Park subdivision in Fort Bend County, Texas.
6. The Banker property is Lot 36, in Block 1, of the Kelliwood Park subdivision.
7. The Fort Bend County Parcel Identification Number for the Banker property is R356720.
8. Christina and Todd Banker purchased the Banker property on July 27, 2007, and have owned the property since that time. A true and correct copy of the deed by which the property was conveyed to Christina and Todd Banker is marked as Joint Exhibit 82.
9. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the finished first floor of the house located on the Banker property is 100.7 feet,

NAVD88/2001 Adjustment.<sup>1</sup>

**Plaintiff Elizabeth Burnham**

10. The property that is the subject of Plaintiff Elizabeth Burnham's claim is a residential property located at 15626 Four Season Drive, Houston, Texas, 77084 (the "Burnham property").

11. The Burnham property is located in the Bear Creek Village Section 12 subdivision in Harris County, Texas. The Burnham property is Lot TR 60, Block 31 in the Bear Creek Village, Section 12 residential subdivision.

12. The Harris County Parcel Identification Number for the Burnham property is 1137260000060.

13. Plaintiff Elizabeth Burnham and her mother, Josena Arquieta, purchased the Burnham property on December 31, 2014. A true and correct copy of the deed by which the property was conveyed to Burnham and Arquieta is marked as Joint Exhibit 121.

14. A true and correct copy of the Burnham property's ownership history is marked as Joint Exhibit 234.

15. A true and correct copy of the contract by which Josena Arquieta agreed to purchase the Burnham property, dated December 8, 2014, and signed by Josena Arquieta, is marked as Joint Exhibit 120.

16. A true and correct copy of the Seller's Disclosure Notice associated with the December 2014 purchase of the Burnham property by Josena Arquieta and Elizabeth Burnham is marked as Joint Exhibit 119.

17. Plaintiff Elizabeth Burnham and her mother, Josena Arquieta, sold the Burnham

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<sup>1</sup> As used throughout these stipulations, the phrase "elevation of the finished first floor" means the elevation in feet of the first floor of any structure on the subject property.

property on February 5, 2018, to Giering Investments. Joint Exhibit 234.

18. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the finished first floor of the house located on the Burnham property is 105.4 to 105.5 feet, NAVD88/2001 Adjustment.

**Plaintiff Juan Giron**

19. The property that is the subject of Plaintiff Juan Giron's claim is a residential property located at 4310 Cassidy Park Lane, Katy, Texas (the "Giron property").

20. The Giron property is located in the Cinco at Willow Fork subdivision in Fort Bend County, Texas.

21. The Giron property is Lot 16, Block 3, Cinco at Willow Fork, Section 1. The Fort Bend County Parcel Identification Number for the Giron property is R246406.

22. Plaintiff Juan Giron and his wife, Anna Giron, purchased the Giron property on October 31, 2005, and have owned the property since that time. A true and correct copy of the deed by which the property was conveyed to Juan Giron and Anna Giron is marked as Joint Exhibit 79.

23. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the finished first floor of the house located on the Giron property is 101.5 feet, NAVD88/2001 Adjustment.

**Plaintiff Scott Holland**

24. The property that is the subject of Plaintiff Scott Holland's claim is a residential property located at 1923 Wingleaf Drive, Houston, Texas 77084 (the "Wingleaf Drive property").

25. The Wingleaf Drive Property is located in Harris County. The Harris County Parcel Identification Number for the Wingleaf Drive property is 1113710000048.

26. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the finished first floor of the house located on the Wingleaf Drive property is 107.8 to 107.9 feet, NAVD88/2001 Adjustment.

**Plaintiff Lakes on Eldridge Community Association**

27. Lakes on Eldridge Community Association, Inc. ("Lakes on Eldridge") is a homeowners association and acquired all its real property from the developer or builder of the Lakes on Eldridge residential subdivision.

28. Lakes on Eldridge is the owner of multiple parcels of real property within the Lakes on Eldridge gated community in Harris County, Texas.

29. The Lakes on Eldridge subject property is limited to the improved parcel of property identified in the Harris County records maintained by the Harris County Appraisal District ("HCAD") as Parcel Identification #1182800010002, 0 Lakes Center Run (Res D Blk 1 Lakes On Eldridge Sec 4).

30. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the finished first floor of the Lakes on Eldridge subject property is 108.9 feet, NAVD88/2001 Adjustment.

**Plaintiff Christina Micu**

31. The property that is the subject of Plaintiff Christina Micu's claim is a residential property located at 6411 Canyon Park Drive, Katy, Fort Bend County, Texas 77450 (the "Micu property").

32. The Micu property is located in the Canyon Gate Cinco Ranch subdivision in Fort Bend County, Texas. The Micu property is located in the Canyon Gate Cinco Ranch Section 7 residential subdivision in Fort Bend County, Texas.

33. The Micu property is Lot One (1), in Block Two (2), of Canyon Gate Cinco Ranch Section Seven (7).

34. The Fort Bend County Parcel Identification Number for the Micu property is R241191.

35. Plaintiff Christina Micu and her husband, Oscar Quintero, purchased the Micu property on February 2, 2012, and have owned the property since that time. A true and correct copy of the deed by which the property was conveyed to Christina Micu and Oscar Quintero is marked as Joint Exhibit 107.

36. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the finished first floor of the house located on the Micu property is 99.8 feet, NAVD88/2001 Adjustment.

**Plaintiff Catherine Popovici**

37. The property that is the subject of Plaintiff Catherine Popovici's claim is a residential property located at 19927 Parsons Green Court, Katy, Harris County, Texas, 77450 (the "Popovici property").

38. The Popovici property is located in the Kelliwood Estates subdivision in Harris County, Texas.

39. The Popovici property is Lot 21 & Tract 22A, Block 4, of the Kelliwood Estates, Section 5 residential subdivision.

40. The Harris County Parcel Identification Number for the Popovici property is 1168400040021.

41. Plaintiff Catherine Popovici and her husband, Alexander Popovici, purchased the Popovici property on June 13, 2003, and have owned the property since that time. A true and

correct copy of the deed by which the property was conveyed to Catherine and Alexander Popovici is marked as Joint Exhibit 262.

42. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the finished first floor of the house located on the Popovici property is 102.2 feet, NAVD88/2001 Adjustment.

**Plaintiff Kulwant Sidhu**

43. Kulwant Sidhu is a joint owner of 29 condominium units located within Harris County in the Aspen Club Condominiums located at 16111 Aspenglenn Drive, Houston, Texas 77084. Mr. Sidhu lives in San Jose, California and all the units are used as residential rental properties.

44. The property that is the subject of Kulwant Sidhu's claim at trial (the "Sidhu property") consists of two of Mr. Sidhu's 29 units:

- a. 16111 Aspenglenn Drive, Unit 603, which is also described in the Harris County records as Unit 603 Building F, .90 Int Common Land & Ele, Aspen Club Condo Ph 2 (HCAD#1150100060013), and,
- b. 16111 Aspenglenn Drive, Unit 604, which is also described in the Harris County records as Unit 604 Building F, .89 Int Common Land & Ele, Aspen Club Condo Ph 2 (HCAD#1150100060014).

45. Units 603 and 604 are jointly owned by Mr. Sidhu and Manvinder Grewal who is Mr. Sidhu's wife's sister.

46. The Sidhu condominium buildings are two stories. Unit 603 is a downstairs unit. Unit 604 is upstairs and directly above Unit 603.

47. Mr. Sidhu and Ms. Grewal purchased Units 603 and 604, along with 13 other units in

the Aspen Club Condominium development on March 29, 2005. They continue to jointly own these 15 units. A true and correct copy of the deed by which these 15 units was conveyed to Mr. Sidhu and Ms. Grewal is marked as Joint Exhibit 72.

48. During the Harvey event, no flood waters reached the upstairs unit (Unit 604).

49. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the top of the finished first floor of the Sidhu condominium building in which Unit 603 and Unit 604 are located is 107.0 to 107.1 feet, NAVD88/2001 Adjustment.

**Plaintiff Elisio Soares**

50. The property that is the subject of Plaintiff Elisio M. Soares' claim is a residential property located at 20526 Indian Grove Lane, Katy, Harris County, Texas 77450 (the "Soares property").

51. The Soares property is located in the Cinco Ranch Equestrian Village Section 3 residential subdivision located in both Fort Bend County and Harris County, Texas.

52. The Soares property is Lot 7 in Block 1 of the Cinco Ranch Equestrian Village Section Three subdivision.

53. The Harris County Parcel Identification Number for the Soares property is 1202010010007.

54. Plaintiff Elisio M. Soares and his wife, Ana L. Soares, purchased the Soares property in 2001 and have owned the property since that time. A true and correct copy of the deed by which the property was conveyed to Elisio M. and Ana L. Soares is marked as Joint Exhibit 263.

55. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the finished first floor of the house located on the Soares property is 101.1 feet, NAVD88/2001 Adjustment.

**Plaintiff Mitchell Stewart**

56. The property that is the subject of Mitchell Stewart's claim is a residential property located 4719 Eagle Trail Road, Houston, Texas (the "Stewart property").

57. The Stewart property is located in the Bear Creek Village, Section 9 subdivision in Harris County, Texas.

58. The Stewart property is Lot 13, Block 12 in the Bear Creek Village, Section 9 residential subdivision.

59. The Harris County Parcel Identification Number for the Stewart property is 1101240000013.

60. Mitchell and Donna Stewart, his wife, purchased the Stewart property on June 24, 1983, subject to a mortgage and have owned the property since that time. A true and correct copy of the assumption deed by which the property was conveyed to Mitchell and Donna Stewart is part of Joint Exhibit 29.

61. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the finished first floor of the house located on the Stewart property is 108.9 to 109.0 feet, NAVD88/2001 Adjustment.

**Plaintiff Robert Turney**

62. The property that is the subject of Plaintiff Robert Turney's claim is a residential property located at 15910 Red Willow Drive, Houston, Texas (the "Turney property").

63. The Turney property is located in the Bear Creek Village Section 1 subdivision in Harris County, Texas.

64. The Turney property is Lot 37, Block 4 in the Bear Creek Village, Section 1 residential subdivision.

65. The Harris County Parcel Identification Number for the Turney property is 1068410000037.

66. Robert and Beverly Turney purchased the Turney property on November 11, 1975, subject to a mortgage. A true and correct copy of the deed by which the property was conveyed to Robert and Beverly Turney is marked as Joint Exhibit 20.

67. As part of divorce proceedings, on December 15, 2004, by Special Warranty Deed, Robert Turney assumed the unpaid principal and interest on the mortgage from Beverly Turney. A true and correct copy of this deed is marked as Joint Exhibit 70.

68. Between January 2 and January 5, 2018, Robert and Onoria Turney conveyed the Turney property to Maryelyn Ramirez. A true and correct copy of this deed is marked as Joint Exhibit 210.

69. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the finished first floor of the house located on the Turney property is 104.5 to 104.7 feet, NAVD88/2001 Adjustment.

**Plaintiffs Kurt and Jean Wind**

70. The property that is the subject of Plaintiff Kurt and Jean Wind's claim is a residential property located at 5306 Sunbright Court, Houston, Texas 77041 (the "Wind property").

71. The Wind property is located in the Twin Lakes residential subdivision in Harris County, Texas.

72. The Wind property is Lot 18, Block 6 of the Twin Lakes, Section 1 residential subdivision.

73. The Harris County Parcel Identification Number for the Wind property is 1169640060018.

74. Plaintiff Kurt Wind and his wife, Jean Wind, purchased the Wind property on August 17, 1990, and have owned the property since that time. A true and correct copy of the deed by which the property was conveyed to Kurt and Jean Wind is marked as Joint Exhibit 41.

75. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the finished first floor of the house located on the Wind property is 109.2 to 109.3 feet, NAVD88/2001 Adjustment.

#### **Plaintiff West Houston Airport Corporation**

76. The West Houston Airport located at 18000 Gorschke Road, Houston, Texas 77084. The property that is the subject of West Houston Airport Corporation's ("WHAC") claim at trial is an improved parcel of land that is part of the West Houston Airport facility (the "WHAC property").

77. The Harris County Parcel Identification Number for the WHAC property is HCAD #0421320000001.

78. Based on the surveys conducted by the parties' retained surveyors in 2018, the elevation of the finished first floor of the terminal building located on the WHAC property is 108.6 feet, NAVD88/2001 Adjustment.

#### **The Buffalo Bayou and Tributaries Project**

79. The U.S. Congress authorized the Addicks and Barker Dams as part of the Buffalo Bayou and Tributaries, Texas Project by the Rivers and Harbors Act of June 20, 1938.<sup>2</sup> The project plan is in furtherance of the project outlined in House of Representatives Document No. 456, 75<sup>th</sup> Congress, 2<sup>nd</sup> Session, authorized by the River and Harbor Act, approved June 20, 1938, and

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<sup>2</sup> Joint Exhibit 1.

amended by the Flood Control Act, approved August 11, 1939.

80. Congress modified the Buffalo Bayou and Tributaries Project by the Flood Control Acts of September 3, 1954, and October 27, 1965.<sup>3</sup>

81. Congress authorized the Buffalo Bayou and Tributaries Project following major flooding in portions of the Buffalo Bayou watershed, including flooding in downtown Houston, from storms in May 1929 and December 1935. The May-1929 and December-1935 storms were two of the six major floods that occurred in Buffalo Bayou between 1854 and 1935.<sup>4</sup>

82. The May-1929 storm resulted in rainfall that varied from 6 to 12 inches over the White Oak Bayou and Buffalo Bayou basins and resulted in reported property losses within the City of Houston of \$1,392,000.<sup>5</sup>

83. The storm of December 1935 resulted in a 3-day rainfall which averaged about 15 inches over the White Oak Bayou and Buffalo Bayou basins. The flooding resulting from the 1935 storm caused the loss of eight lives and property damage estimated at \$2,528,000.<sup>6</sup>

84. Buffalo Bayou rises in eastern Waller County and western Harris County and flows in a generally eastward direction for approximately 75 miles. Below the confluence of Buffalo Bayou and South Mayde Creek in western Harris County, Buffalo Bayou continues east to downtown Houston where it is joined by White Oak Bayou.

85. Buffalo Bayou continues further east to eventually include the Houston Ship Channel and, ultimately, flows into San Jacinto Bay, Galveston Bay and the Gulf of Mexico.

86. The purpose of the Buffalo Bayou and Tributaries Project, as generally described in

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<sup>3</sup> Joint Exhibit 13; Joint Exhibit 17.

<sup>4</sup> Joint Ex. 5.

<sup>5</sup> Joint Ex. 5.

<sup>6</sup> Joint Ex. 5.

the Buffalo Bayou, Texas, Definite Project Report, U.S. Engineer Office, Galveston, Texas (June 1, 1940), and the project-related documents cited therein, is to provide flood risk reduction on the Buffalo Bayou watershed and to provide flood risk reduction to the City of Houston and the Houston Ship Channel.<sup>7</sup>

87. The Buffalo Bayou and Tributaries Project includes the Addicks Dam and Reservoir and the Barker Dam and Reservoir.

88. The drainage area for the Addicks Reservoir watershed is approximately 136 square miles.

89. The drainage area for the Barker Reservoir watershed is approximately 130 square miles.

90. The United States began acquiring land for the Addicks and Barker Dams/Reservoirs in the early 1940s. The U.S. Army Corps of Engineers (“USACE”) began construction of the Addicks Dam in May 1946. The construction of the Addicks Dam was completed in December 1948.

91. Addicks Dam/Reservoir is located in western Harris County on the north side of present-day Interstate Highway 10.

92. The Addicks Dam consists of an earthen embankment that measures approximately 61,166 feet or 11.6 miles long.

93. The outlet structure on Addicks Dam was constructed with five outlet conduits. One of the five conduits was gates at the time of construction, and two additional conduits were gates prior to the completion of construction. The remaining three conduits were ungated at the time construction was completed.

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<sup>7</sup> Joint Ex. 5.

94. The United States purchased approximately 12,460 acres of property behind Addicks Dam.

95. The USACE began construction of Barker Dam in February 1942. The construction of Barker Dam was completed in February 1945.

96. Barker Dam/Reservoir is located south of the Addicks Dam/Reservoir in western Harris County and Fort Bend County, on the south side of present-day Interstate Highway 10, west of Texas State Highway 6.

97. The Barker Dam consists of an earthen embankment that measures approximately 71,900 feet or 13.6 miles long.

98. The outlet structure on Barker Dam was constructed with five outlet conduits. At the time of initial construction, one of the five conduits was gated, and the remaining four conduits were ungated.

99. The United States purchased approximately 12,060 acres of property behind Barker Dam.

100. Addicks and Barker Dams are located approximately 17 miles west of downtown Houston, upstream of the confluence of Buffalo Bayou and South Mayde Creek.

101. The Addicks Dam and Reservoir boundaries are depicted in a land survey showing the current boundary of the federally-owned lands at the dam, and reflect the land acquired in furtherance of the 1940 plans for the dam.<sup>8</sup>

102. For the Addicks Dam, the United States acquired all land at and below an elevation of approximately 103 feet NAVD 1988 (2001 adjustment) behind and upstream of Addicks Dam.<sup>9</sup>

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<sup>8</sup> Joint Exhibit 98.

<sup>9</sup> Joint Exhibit 118 at USACE019883.

103. The Barker Dam and Reservoir boundaries are depicted in a land survey showing the current boundary of the federally-owned lands at the dam, and reflect the land acquired in furtherance of the 1940 plans for the dam.<sup>10</sup>

104. For the Barker Dam, the United States acquired all land at and below an elevation of approximately 95 feet NAVD 1988 (2001 adjustment) behind and upstream of Barker Dam.<sup>11</sup>

105. The Water Impact Table in the 2014 Emergency Action Plan states that the storage capacity of the government-owned land within the Addicks Reservoir is 127,591 acre-feet of water.

106. The Water Impact Table in the 2014 Emergency Action Plan states that the storage capacity of the government-owned land within the Barker Reservoir is 82,921 acre-feet of water.<sup>12</sup>

### **Hurricane/Tropical Storm Harvey**

107. On August 25, 2017, Hurricane Harvey (“Harvey”) made landfall along the Texas coast, near Rockport, Texas, as a Category 4 hurricane.<sup>13</sup>

108. Harvey weakened into a Tropical Storm within 12 hours of making landfall but stalled over the Houston area for four days before moving into Louisiana on August 30, 2017. Harvey maintained tropical storm intensity the entire time the storm was inland over southeast Texas.<sup>14</sup>

109. During Harvey, the USACE operated the Addicks and Barker Dams by opening and closing their floodgates consistent with its 2012 Water Control Manual.

110. On or about August 30, 2017, the water behind Barker Dam crested at approximately 101.6 feet elevation above NAVD88.

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<sup>10</sup> Joint Exhibit 99.

<sup>11</sup> Joint Exhibit 118 at USACE019885.

<sup>12</sup> Joint Exhibit 118 at USACE106478.

<sup>13</sup> Joint Exhibit 229.

<sup>14</sup> Joint Exhibit 229.

111. On or about August 30, 2017, the water behind Addicks Dam crested at approximately 109.1 feet elevation above NAVD88.

112. The Addicks Reservoir reached a record pool elevation behind the dam of 109.1 feet on August 30, 2017.

113. The record pool behind Addicks Dam during Harvey was the largest pool ever recorded, larger than the pool experienced during the 2016 Tax Day storm, during which the pool behind Addicks Dam reached an elevation of 102.65 feet NAVD 1988, 2001 Adjustment.<sup>15</sup>

114. The Barker Reservoir reached a record pool elevation behind the dam of 101.6 feet on August 30, 2017.

115. The record pool behind Barker Dam during Harvey was the largest pool ever recorded, larger than the pool experienced during the 2016 Tax Day storm, during which the pool behind Barker Dam reached an elevation of 95.24 feet NAVD 1988, 2001 Adjustment.

116. The National Oceanic and Atmospheric Administration (“NOAA”) acquired aerial imagery in connection with Hurricane Harvey. This aerial imagery is publicly available on NOAA’s website at the webpage captioned “Hurricane HARVEY Imagery” at:

<https://storms.ngs.noaa.gov/storms/harvey/index.html#12/29.7983/-95.6449>. The metadata for NOAA’s aerial imagery <https://storms.ngs.noaa.gov/storms/harvey/download/metadata.html>. This aerial imagery includes aerials for certain areas upstream and downstream of Addicks and Barker dam taken on August 30, 2017.

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<sup>15</sup> Joint Ex. 134 at USACE869255.

Stipulated Appendix

The parties are preparing a Stipulated Appendix containing copies of the parties' written discovery responses and admissions. This Stipulated Appendix will be submitted in a separate filing prior to trial.

Dated: April 23, 2019

Respectfully submitted,

/s/ Daniel H. Charest

Daniel H. Charest  
Larry Vincent  
Burns Charest LLP  
900 Jackson Street, Suite 500  
Dallas, Texas 75202  
469-904-4550  
dcharest@burnscharest.com  
lvincent@burnscharest.com

***Co-Lead Counsel, Upstream Pre-Trial Discovery and Dispositive Motions***

***Co-Lead Counsel for Upstream Plaintiffs as to Jurisdictional Discovery, Motion to Dismiss and Scheduling***

/s/ Armi Easterby

Edwin Armistead "Armi" Easterby  
Williams Kherkher Hart Boundas, LLP  
8441 Gulf Freeway, Suite 600  
Houston, Texas 77017  
713-230-2200  
aeasterby@williamskherkher.com

***Co-Lead Counsel, Upstream Pre-Trial Discovery and Dispositive Motions***

/s/ Charles Irvine

Charles Irvine  
Irvine & Conner PLLC  
4709 Austin Street  
Houston, Texas 77004  
713-533-1704  
charles@irvineconner.com

***Co-Lead Counsel, Upstream Pre-Trial Discovery and Dispositive Motions***

/s/ Vuk Vujasinovic

Vuk S. Vujasinovic  
VB Attorneys, PLLC  
6363 Woodway Drive, Suite 400  
Houston, Texas 77057  
713-224-7800  
vuk@vbattorneys.com

***Of Counsel for Upstream Plaintiffs as to Jurisdictional Discovery, the Government's Motion to Dismiss, and Scheduling***

Respectfully submitted,

JEAN E. WILLIAMS  
Deputy Assistant Attorney General  
Environment & Natural Resources Division

*By /s/ William Shapiro*  
WILLIAM J. SHAPIRO  
KRISTINE S. TARDIFF  
LAURA W. DUNCAN  
JESSICA HELD  
BRADLEY L. LEVINE  
DAVID L. DAIN  
MAYTE SANTACRUZ  
CHRISTOPHER CHELLIS  
BRENT ALLEN  
Trial Attorneys  
United States Department of Justice  
Environment & Natural Resources Division  
501 I Street, Suite 9-700  
Sacramento, CA 95814  
916-930-2207 (office)  
[William.shapiro@usdoj.gov](mailto:William.shapiro@usdoj.gov)

United States Department of Justice  
Environment & Natural Resources Division  
P.O. Box 7611  
Washington, DC 20044-7611

*Counsel for the United States*